



PLANNING BULLETIN

BULLETIN No. 1-2008

SUBJECT: Commission Staff Consideration of Requests for Zoning Variations

RESOURCE: Commission Land Use Planning Staff

DATE: October 17, 2008

HOW PLANNING COMMISSION STAFF CONSIDERS ZONING VARIANCES

Because zoning ordinances allow for the consideration of variations, the Planning Commission staff is required to render an objective professional opinion on whether or not the relief called for in the petition should be granted. This *Planning Bulletin* is not intended to be a legal brief concerning the granting or denying of variations, but is instead intended to give some explanation as to why a petition as submitted might receive a positive or negative Planning Commission staff recommendation.

The “Variance”

A variation allows for relief from specific limitations of the zoning ordinance related to structures to be constructed on a lot, such as yard dimension or set back, height or bulk of the structure, or lot configuration. They are sometimes confused with “special uses” which pertain to how a property may be used in ways not ordinarily provided for in a zoning classification and have their own legal conditions, but we will only be addressing variations here.

As the name implies, what the petitioner is effectively asking the jurisdiction to do is amend its requirements in a specific case: to grant a variation of the regulations in its ordinance. Allowing for variations is authorized in statute (65 ILCS 5/11-13-4) and not unreasonable because while zoning requirements are meant to be generally applied in all applicable zoning districts, unique circumstances can arise in particular cases which may warrant some relief. But because a variation is a change in regulations to the benefit of an individual property owner and is not given to all, the law establishes a set of standards that are used to evaluate whether or not a variation is appropriate and the situation unique enough to warrant one.

The “Standards of Variation”

There are three standards established by Sangamon County and drawn from State statute to be used to judge a requested variation:

- That the property in question cannot be economically used or cannot yield a reasonable return if permitted to be used only for the conditions allowed by the regulations.
- That the plight of the owner is due to circumstances unique to the property and not generally applicable to other property in the area.
- That the variation, if granted, will not alter the essential character of the locality, impair an adequate supply of light and air to adjacent property, increase the congestion of traffic, or diminish or impair property values in the locality.

You should notice two things about these standards. First, the standards are all associated with one or more of the conditions typically used to establish public purpose for regulation: public health, public safety or economic impact. Second, all three standards must be met for a positive recommendation that the relief be granted.

Since a petitioner is asking for this special consideration, it is the petitioner's responsibility to provide evidence as part of his or her request – the petition – to demonstrate that the standards of variation are met and the relief could be granted. The beginning supposition is not that any request for relief *should* be granted, but that it *may* be if it can be demonstrated that the standards are met. *It is the petitioner's burden to provide this evidence in some way.*

The Commission Staff Review

When a petition is submitted to Commission staff for review, they do not have available to them evidence that may ultimately be presented at the hearing conducted by the Zoning Board. They must base their review upon (1) the evidence presented in the petition, where the property owner is to initially meet the burden of demonstrating that the standards of variation are met, and (2) a physical inspection of the lot where the relief is requested.

Should the property owner request a variation and give no reason as to why it is requested or any evidence that the standards of variation can be met, the staff have no alternative but to recommend denial as the standards or variation have not been met by the petitioner. This is particularly true if the petitioner does not indicate the degree of relief sought, as the staff must assume that the petitioner seeks relief from the entire requirement when he or she may only want relief from part of the requirement or only on a part of the property.

The staff's visual review of the site might provide the evidence needed to demonstrate that there is a unique situation calling for a variance, and on this basis the staff may recommend approval, but it is important to understand that it is not the staff's burden to find evidence supporting approval as they must be objective in their assessment. The visual inspection could even provide evidence that does not support the relief. In either event, the staff is to render a professional and objective judgment based upon the evidence presented that can be taken into consideration by the finders of fact, the Zoning Board, in light of any additional evidence.

The Unique Situation of Existing Structures Found Not in Conformance

In some situations petitioners may request a variation for a structure that already exists on a lot but does not meet the zoning ordinance. This may be due to an oversight on the part of the property owner when the structure was built, or the property owner might find after purchasing a property that an existing structure does not meet the code. Whatever the reason, if the property is not in conformance with the zoning ordinance (is not a legal non-conforming use) it must be brought into conformance or relief from the requirement obtained through a variance.

The first question Commission staff will ask is if a variation is necessary to come into compliance. If compliance can be provided in some alternate way, this is preferable as it does not require what is effectively an amendment of the zoning ordinance to the benefit of an individual property owner.

If a variation *is* required for an existing but non-conforming structure, the same standards of variation must be met as would have been the case if the structure did not exist and the property owner wanted to build it. The property owner again has the burden of providing evidence that the standards of variation could have been met if the relief had been requested prior to the construction. The Commission staff must review the case as if the structure were not on the property and then ask if the evidence supports the case.

For example, suppose a case in which a property is not in compliance with zoning regulations because a garage has been built too close to a side lot line. The Commission staff must consider whether the garage would have met the standards of variation if the property owner had requested such relief prior to the garage being built; for example, could it have been built somewhere else on the lot that would meet the requirements. If the staff finds that it would have met the standards, it is likely that they will recommend approval. If it would not, a denial may be recommended.

It is important to understand that this approach is taken so as not to encourage non-conformance with the zoning ordinance. Encouraging non-conformance would only provide a benefit to property owners who do not comply, to the potential detriment of those who do.

SSCRPC *Planning Bulletins* are provided for educational and informational purposes only. They are not intended to provide a legal opinion and do not. Those seeking legal guidance concerning matters coming before the Springfield-Sangamon County Regional Planning Commission are encouraged to obtain appropriate legal counsel. For more information concerning the subject covered by this or other *Planning Bulletins*, please contact the Planning Commission at 217-535-3110, or e-mail us at sscrpc@co.sangamon.il.us.